

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2105 of 2000
with
SPECIAL CIVIL APPLICATIONS Nos.3090 of 2000 TO 3099 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed :
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

YOGESH D BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2105 of 2000
MR SR BRAHMBHATT for Petitioners
MR SP HASURKAR for Respondent No. 1, 2
Mr. Digant P. Joshi, AGP for Mr.S.P. Hasurkar.
2. Special Civil ApplicationNo 3090/ 2000 to 3099/2000
MR SR BRAHMBHATT for Petitioners
Mr.S.P. Hasurkar for respondents nos.1, 2
Mr.Digant P. Joshi, AGP for Mr.S.P. Hasurkar.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 09/05/2000

COMMON ORAL JUDGEMENT

Rule. Mr.Digant P. Joshi, learned Assistant Govt. Pleader for the respondents waives service of the rule. Mr.Shailesh Brahmhatt, learned advocate for the petitioners seeks permission to withdraw the petition qua petitioner no.1, Mr.Yogesh Bhatt in Special Civil Application No.2105 of 2000. Permission is granted. The petition, Special Civil Application No.2105 of 2000 shall stand withdrawn so far as petitioner no.1 is concerned. Rule is discharged with no order as to costs qua petitioner no.1 only.

2. Initially, the petition, Special Civil Application No.2105 of 2000 was filed for 11 petitioners, of who, petitioner no.1, Shri Yogesh Bhatt has withdrawn his petition. This Court by an order dated 29.3.2000 had directed the learned advocate for the petitioners to file one page petitions for individual petitioners and accordingly, Special Civil Applications Nos.3090 of 2000 to 3099 of 2000 were filed. All these petitions are disposed of by this common judgement.

3. Short facts giving rise to the present petitions are that all the petitioners are suspended Assistant Inspectors of Motor Vehicle or Inspector of Motor Vehicle, as mentioned in the title of the individual petition. By way of this petition they are challenging the suspension orders passed against the petitioners and also the continuation of the same, mainly on the ground that the continuation of the suspension order of the petitioners is discriminatory inasmuch as either the order of suspension of the petitioners is not reviewed by the authorities or that the same is not revoked though the suspension orders passed in case of other similarly situated persons were revoked by the authorities. The other ground of challenge to the continuation of the suspension order is that the said continuation is contrary to various Govt. Resolutions, which require a periodical review of suspension order and in case of an opinion for the revocation of the same, the same shall be revoked.

Another point on which continuation of the suspension

order is challenged is that there is inaction on the part of the authorities inasmuch as the authorities have not implemented the recommendations of the Review Committee. It is the case of the petitioners that a meeting of the Review Committee was held on 30.10.1999 and to the best of the knowledge of the petitioners said Review Committee has recommended revocation of suspension orders of the petitioners.

4. The present petition was filed on 24.3.2000. This Court issued notice on 29.3.2000 making it returnable on 12.4.2000. On 29.3.2000, this Court directed respondent no.2 to consider and place the decision regarding recommendations made by the Review Committee in its meeting dated 30.10.1999 by the returnable date.

5. Learned advocate appearing for the respondents has placed on record a copy of the letter dated 18.4.2000, written by the Deputy Secretary, Home Department (Transport). A copy of the said letter was made available to the learned advocate, Mr.S.R. Brahmbhatt for the petitioners. The learned advocate for the petitioners has then amended the petition by a draft amendment dated 25.4.2000. Said draft amendment was allowed on 27.4.2000 and the respondents were directed to file an affidavit in reply to the amended petition latest by 4.5.2000 so as to see that appropriate orders can be passed on 4.5.2000.

6. An affidavit in reply was filed on 4.5.2000 by the Under Secretary to the Govt. of Gujarat, Home Department (Transport). Besides the aforesaid contentions raised by the petitioners in the petition, by the draft amendment it is contended that the authorities did not place their decision on the record of the case in spite of the clear order of this Court dated 29.3.2000, till 24.4.2000, which ought to have been placed on record latest by 12.4.2000. It is also contended by the said amendment that the letter dated 18.4.2000 is not in compliance with the order of this Court dated 29.3.2000 inasmuch as the phrase used in the said letter are, "Sarkar Shri no Abhigaam". It is the case of the petitioners that the phrase cannot mean that the letter conveys the decision of the Government. It only conveys "the approach of the Government" and therefore, it cannot be said that the respondent authorities have complied with the order of this Court.

7. It is also contended on behalf of the petitioners that the so called approach of the Govt. is illegal,

arbitrary, extraneous, mala fide and taken only with a view to harass the petitioners, who have not chosen to succumb to various pressures. It is stated in para 4(g)(i) :

".. .. The petitioners have shown that during the year 1995, 1996 and 1997 there were total 47 employees who were all roped in a trap cases made by some Police Officer in total 27 trap cases. Now, it is pertinent to note that all these 47 employees of RTO department were facing and rather are facing today also charge sheets and criminal cases. There cannot be any distinction inter se amongst these offices. The Govt. G.R. which has been produced on the record of this petition specifically provide that even in case of offices and/ or employees against whom the criminal cases are pending and charge sheets have been filed if they are languishing in the plight of suspension for more than 2 years then their cases are to be reviewed for reinstatement. This Govt. Resolution has so far not been amended nor has it been rescinded. It is today also in force. The petitioners say and submit that the respondent Govt. has for the obvious reasons chosen to cull out only 13 officers out of these 47 officers who were facing criminal trials and against whom the charge sheets were filed. Out of this 47 officers the 13 officers were chosen to be reinstated vide order dated 7.7.1997, copy whereof is at Annexure J (page 58). These 13 officers were reinstated without there being any recommendation of the Review Committee. The petitioners have reliably learnt that all these 13 officers cases were never placed before any RC nor were they in any way different than the other 47 officers whose list are produced at Annexure B to the memo of the petition. Thus, the respondent govt. is called upon to produce the concerned file containing justification for choosing only these 13 officers out of those 47 employees amongst whom the present petitioners are also part and parcel."

The petitioners have tried to make out their case on the ground of discrimination on the basis of the treatment given to the 13 officers referred to hereinabove on one hand and the petitioners on the other. The petitioners have also tried to make out a case by giving details as to how these 13 officers were given favourable treatment

in the matter of their reinstatement and also in some cases they have been promoted to a higher post and posted on a very sensitive posts. The case which is tried to be made out by the petitioners is that the respondent Govt. blatantly adopted pick and chose policy.

8. A perusal of the affidavit in reply filed by Shri R.B. Bara, Under Secretary, Home Deptt. (Transport) reveals that the Govt. has not accepted the recommendations of the Review Committee and that it is not the right of the petitioners to be reinstated after the recommendations of the Review Committee. The affidavit in reply states in para 6 as under :

"It is denied that the respondent Govt. has acted arbitrarily and mala fide in not reinstating the petitioners. It is submitted that the Govt. has taken a policy decision not to reinstate the petitioners but subject to the result of the criminal cases/ departmental inquiry cases. It is submitted that the Govt. has changed its policy for the present and it has been decided that in the Motor Vehicles Deptt. in all suspension cases, the employees should not be reinstated but subject to the result of the criminal cases/ departmental inquiry cases. The Govt. Resolution relied upon by the petitioners are not mandatory in nature. They have no legal force. These are the guidelines only. The Govt. can deviate from these guidelines.

9. The Govt. has taken a policy decision not to reinstate the petitioners subject to the result of the criminal cases/ departmental inquiry cases. It is submitted that the Govt. has changed its policy for the present and it has been decided that in the Motor Vehicles Deptt. in all suspension cases, the employees should not be reinstated subject to the result of the criminal cases/ departmental inquiry cases.

10. Para 7 of the said affidavit in reply gives details which are relevant while considering the submissions made by the petitioners and for the ready perusal of the same, they are reproduced hereunder,

"It is submitted that during the last five years, i.e. from 1995- 96 to 1999- 2000 in all 92 persons have been suspended for corrupt practices. Out of them 60 persons have been reinstated, two retired under suspension, one person expired under suspension, one person

dismissed under suspension and 28 persons including the petitioners are still under suspension. A policy decision has been taken by the Govt. not to reinstate them by way of review of their cases under Govt. Resolution dt.15.7.1993 (Annexure D to the petition) such suspension cases will be decided subject to the result of the criminal cases/ departmental inquiry cases pending against them. . . . "

11. Along with the said affidavit in reply, the following annexures were produced :

Annexure I (list of persons who were suspended on account of criminal cases launched by ACB), Annexure II (list of persons who were suspended on account of departmental proceedings, and Annexure III (a statement showing number of persons suspended during the last five years, number of persons reinstated in each year and number of persons still under suspension).

Learned advocate appearing for the respondents pointed out that in none of these cases the suspension order is revoked after the Govt. has taken the aforesaid decision not to reinstate the employees in Motor Vehicle Department subject to the result of the criminal cases/ departmental inquiry cases. A perusal of Annexure 'I' will reveal that after 9.7.1997 no officer of the rank of the petitioners, i.e. Assistant Inspector of Motor Vehicle or Inspector of Motor Vehicle is reinstated. Learned advocate for the respondents pointed out that after 1997, one Shri R.V. Jhala, Assistant Inspector of Motor Vehicles, whose name appears at serial no.45, was reinstated on 5.2.2000 and that was done only after said Shri Jhala and another Inspector of Motor Vehicles, Shri P.A. Shah came to be acquitted by the learned Special Judge, Godhra. The name of Shri P.A. Shah is at serial No.52. Learned advocate for the respondents pointed out that said details are already set out in the aforesaid letter dated 18.4.2000. The learned advocate also pointed out that as one Shri H.J. Rathod is also acquitted by the learned Special Judge, Sabarkantha at Himatnagar on 30.3.2000 in his case also necessary steps are being taken for reinstating him and the Commissioner of Transport is intimated about the same on 15.4.2000. It is also stated in the said letter that one Shri R.R. Trivedi, against whom also departmental inquiry is completed, necessary instructions are given to the Transport Commissioner for reinstatement. The learned advocate for the respondents emphatically submitted that the perusal at Annexure III will reveal that 1997- 98

onwards no person is reinstated, except the persons, who are mentioned in the aforesaid letter dated 18.4.2000.

12. In view of the aforesaid facts, no relief as prayed for can be granted and the petition is required to be rejected. It is clear that under the Govt. Resolutions, which are referred to no right is flowing in favour of the petitioners, which can be enforced in the court of law and which may warrant an order from this Court, directing the respondents to reinstate the petitioners. It is clear from the perusal of the Annexures to the affidavit in reply dated 4.5.2000 that there is no reinstatement of any person subsequent to 1997, except in cases which are explained in the letter dated 18.4.2000.

13. The case of the petitioners, therefore, fails. These petitions stand dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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